

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

PATRICIA N. WILLIS,

Plaintiff,

v.

READY MIX U.S.A., INC.,

Defendant.

CIVIL ACTION NO.

02-AR-3137-S

FILED  
04 MAY 17 PM 1:07  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

ENTERED  
MAY 17 2004

MEMORANDUM OPINION

Defendant, Ready Mix U.S.A., Inc. ("Ready Mix"), has moved for an order requiring plaintiff, Patricia Willis ("Willis"), to file a bond pursuant to Rule 7, Federal Rules of Appellate Procedure. The motion was orally argued on May 14, 2004. Ready Mix argued that Willis's appeal is frivolous and devoid of merit and therefore, that a Rule 7 bond should include anticipated attorney's fees for an assuredly successful defense of plaintiff's appeal. The court respectfully disagrees with defendant's analysis and understanding of *Pedraza v. United Guaranty Corp.*, 313 F. 3d 1323 (11<sup>th</sup> Cir. 2002). In a case like this one, which involves a fee shifting statute, *Pedraza* requires the fixing of a bond that includes anticipated attorney's fees for the appellee as part of the costs of defending the appeal, if successful, without regard to whether the appeal had colorable merit in the first place. This issue is not before the Eleventh Circuit in another case, *Joseph Young, et al. v. New Process Steel, LP*, No. 03-16101-J and No. 04-11554.

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Because unnecessary to the decision, the court declines to find that Willis's appeal is totally devoid of merit, but nevertheless will grant Ready Mix's motion pursuant to Rule 7, F.R.A.P. There is no quarrel by Willis with the amount of the bond suggested by Ready Mix. Therefore, a bond in the amount of \$11,000.00, representing the necessary anticipated costs of defending the appeal, will be fixed by separate order.

DONE this 17<sup>th</sup> day of May, 2004.



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WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE